IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1371 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GSRTC & 1

Versus

JK BHATTI

Appearance:

MR PRANAV G DESAI for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/12/98

ORAL JUDGEMENT

#. This civil revision application has come up for hearing before this Court on 3.12.98. On that date, the matter has been called out for hearing in three rounds, but none present for respondents and it has been adjourned to 16th December 1998. On this date also, the matter has been called out in three rounds but none put appearance for respondents.

#. Heard the learned counsel for the petitioner and perused the impugned order of the 4th Extra Assistant Judge, Rajkot dated 4.1.94.

#. The plaintiff-respondent is a clerk in the Accounts Department of divisional office of the Gujarat State Road Transport Corporation. He was served with a chargesheet and against him for charges of misappropriation of amount of the corporation and also of falsification of account books.

#. A criminal complaint has also been filed against the respondent for the offences punishable under Sections 409, 465, 468, and 477A of the Indian Penal Code. From the civil revision application, I find that this criminal case is pending in the criminal Court. After holding departmental inquiry in the default case No.97/2 on 24th May 1993, an order has been passed by petitioners under which the respondent was ordered to be dismissed from services of the Corporation.

#. The plaintiff-respondent is `workman' and the Corporation is an `industry' and this dispute was also an industrial dispute, but the plaintiff-respondent has chosen to approach the Civil Court by challenging the order of his dismissal from services by filing Regular Civil Suit No.619 of 1993 in the Court of 4th Civil Judge, (S.D)., Rajkot. As usual, along with the suit, he filed an application purporting to be under Order 39, Rule 1 and 2 of CPC praying therein for grant of temporary injunction and same came to be rejected by the trial Court vide its order dated 5.7.93. This order of the learned trial Court was carried by the plaintiff-respondent in Appeal by filing Civil Misc. Appeal No.127 of 1993 which came to be decided by the 4th Extra Assistant Judge at Rajkot on 4.1.94. The appeal has been allowed and the order of the learned trial Court, below ex.5 in Regular Civil Suit No.619 of 1993 dated 5.7.93 was set aside and the application at ex.5 of the plaintiff-respondent was allowed and an interim injunction was granted against the respondent-petitioner in terms of paragraph-3 of the said application till final disposal of the suit. The learned first Appellate Court has given further directions by way of clarification that the defendant-petitioner shall be at liberty to hold fresh departmental inquiry and this interim injunction shall not come in their way that is to say that they are not restrained from holding fresh departmental inquiry against the plaintiff-respondent and in case the charges framed against him are proved, it was open to award fresh penalty and to implement and execute

penalty which may be passed in the fresh departmental inquiry. It has further been made clear that pendency of the suit of the plaintiff-respondent shall not bar the fresh departmental inquiry. Hence this civil revision application before this Court.

#. This civil revision application was placed in the Court for admission on 27.1.1995. This Court has been pleased to issue notice to the respondent returnable on 10.2.95. Interim stay in terms of para-10(b) has been granted till 13.2.95. On 10.2.95, the matter has come up for admission before this Court and the civil revision application has been admitted and ad-interim stay in terms of para-10(b) granted on 27.1.95 was made absolute till final hearing of the civil revision application. Just after the aforesaid order was passed by this Court, the learned counsel for the respondent put appearance and he made a request to the Court for hearing him on the merits of the matter. After hearing the matter on merits, I find from the file of this case that interim relief which has been granted by this Court was ordered to be vacated. On being asked by the Court, the learned counsel for the defendant-petitioner admitted that fresh inquiry has not been conducted by petitioner against the plaintiff-respondent till this date. The learned counsel for the petitioner is not at variance that in pursuance of the order of the first appellate Court, the plaintiff-respondent is continuing in service of the Corporation. The learned counsel for defendant-petitioner is in agreement that criminal case which has been filed against the plaintiff-respondent is still pending.

#. The learned counsel for the petitioner contended that the suit filed by plaintiff-respondent challenging therein the order of the Corporation dismissing him from services on proof of his misconduct in departmental inquiry was not maintainable. He being `workman' and the Corporation being an `industry', the only remedy to him was of filing a case before the Labour Court or Industrial Tribunal as the case may be. Supplementing this contention, the learned counsel for the defendant-petitioner raised an important issue that in the Labour Court or Industrial Tribunal, where the workman raises an industrial dispute regarding legality propriety and correctness of the order of dismissal from services made after holding departmental inquiry, where the Labour Court or Industrial Tribunal finds the departmental inquiry to be defective, a valuable right is there to the employer to prove the misconduct before the said Court and on proving thereof, the penalty shall

relate back to the date of dismissal. In support of this contention the learned counsel for the defendant-petitioner placed reliance on the following decision of the Hon'ble Supreme Court:

R. Thiruvirkolam v. Presiding Officer - 1997(1) SCC 9

#. It is submitted that the learned trial Court has correctly opined that looking to the serious and grave charges of misappropriation of Corporation's money as well as falsification of account books it cannot be taken to be a fit case to protect delinquent employee by exercise of discretionary powers in its equitable jurisdiction in his favour. Carrying this contention further, the learned counsel for the petitioner contended that in the case of misappropriation of Corporation's money on proof thereof in the departmental inquiry, minimum penalty should have been dismissal or removal of the employee from services and in support of this contention he placed reliance on decision of the Hon'ble Supreme Court in the case of Narayan Dattatraya Ramteerthankar v. State of Maharashtra 1997(1) SCC 299.

#. It has next been contended that the learned first appellate Court in an Appeal under Order 43, Rule 1, CPC, against the order of the learned trial Court passed in its discretionary powers in equitable jurisdiction it has very very limited power of judicial review. Only where the order is found to be perverse or where material evidence would have been ignored or where evidence has been misread etc. then only interference could have been made but not as of routine. On the powers of the appellate Court in Appeal under Order 43, Rule 1, CPC, the learned counsel for the petitioner placed reliance on decision of the Apex Court in the case of Wander Ltd. vs. Antox India (P) Ltd. reported in 1990 Supp. SCC 727.

##. Concluding this contention, the learned counsel for the petitioner submitted that the learned first appellate Court has committed serious illegality in exercise of its jurisdiction in interfering with the order of the learned trial Court. Lastly, the learned counsel for the petitioner urged that in the matter of grant of temporary injunction, and more so in the service matters, the Courts should be very cautious and careful and only in exceptional cases injunction of mandatory character may be granted. The Courts are to adhere to the well settled

recognised and given principles of law by the catena of decisions of the Apex Court in the case of grant of temporary injunction under Order 39, Rule 1 and 2 CPC. With all due respect to the learned first appellate Court, what the learned counsel for the petitioner contended that it has not adhered to those principles and it has granted temporary injunction in favour of the plaintiff-respondent as if it is passing a final decree in the suit. The first appellate Court has come to a final decision on the validity, propriety and correctness of the departmental inquiry. Much emphasis has been laid by the learned counsel for the petitioner that the order which has been passed byway of interim relief is virtually a final decision in the suit at this stage which time and again the Apex Court has deprecated. In support of this contention, reliance has been placed on the decision of the Apex Court in the following cases:

State of U.P. vs. Vishveshwar, 1995 Supp. (3) SCC 590

Bank of Maharashtra vs. Race Shipping and Trans Comp, 1995 (3) SCC 257,

Bharatbhushan Sonaji Kshrir Sagar vs. Abul K Mohd.
1995 Supp. (2) SCC 593

##. I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner and perused the impugned order of the first appellate Court.

##. From the judgment of the learned first appellate Court, I find that it has given a final decision in the suit itself. It has given decision that the departmental inquiry is vitiated and the order of dismissal passed for the petitioner cannot be taken as legal order. After giving of this finding and decision, I fail to see now what remains in the suit to be decided by the trial court. I am seeing everyday that subordinate Courts are not deciding the matters of grant of temporary injunction after taking into consideration the law as laid down on the subject by the Apex Court. They are deciding these matters as if a final decision has to be given in the suit at this stage.

##. The learned first appellate Court has recorded categorical finding of fact that grievances of the plaintiff-respondent that he was not supplied with the documents relied upon by the Inquiry Officer, he was not given proper opportunity of defence during the departmental inquiry, chargesheet is vague, he was not

given opportunity to cross-examine the witnesses, he was not supplied with the copies of ledger and account books, the statements of witnesses, report of accounts officer, report and opinion of the hand writing expert, necessary and material witnesses were not examined, and principles of natural justice have not been followed are not acceptable. So the contention made on these points aforesaid by the learned counsel for the respondent has not been accepted by the learned first appellate Court. Only defect which has been found by the learned first appellate Court in the departmental inquiry is that the inquiry officer has acted as an inquiry officer, prosecutor and presiding officer and further he became a judge in his own case. After recording this finding, the learned first appellate Court said that in view of the judgment of this Court in the case of A.P. Kadri vs. Gujarat State Rd. Trans. Corpn. reported in 1992 (2) GLH 21, this act of the inquiry officer clearly vitiates the departmental inquiry even if no prejudice has been caused to the plaintiff-respondent.

##. Dealing with the approach of the learned trial Court declining to grant temporary injunction in favour of the plaintiff-respondent on the ground of seriousness of charges against him, the learned first appellate Court felt contended by observing that even if the charges are serious, the employee is entitled to fair procedure which is established by rule of law and therefore the order of the learned trial Court dismissing the application for grant of injunction of plaintiff-respondent is illegal bad, unlawful and liable to be quashed and set aside. So the sum and substance of the judgment of the first appellate Court is that the only defect has been found in the inquiry is that the inquiry officer has acted as inquiry officer, prosecutor, and judge. This defect in the inquiry was taken to be sufficient to vitiate the same and the consequential relief of reinstatement in services irrespective of the fact whether it caused any prejudice to him or not and further irrespective of grave and serious charges are framed against him and held proved in the inquiry was granted in favour of the respondent herein.

15. Grant or refusal of temporary injunction under Order 39 Rule 1 and 2, C.P.C. is a discretionary relief in equitable jurisdiction of the trial court. It is true that this order of the trial court made under Order 39, Rule 1 and 2 C.P.C. is appealable under Order 43 Rule 1 and 2 of C.P.C. But the appellate court also has not that much of wide powers as what normally it is understandable against the final decree passed by the

trial court in the civil suit. So very limited interference is permissible in the appeal as the order of learned trial court is only discretionary order in equitable jurisdiction. The appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against the exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.

16. In the case of grant of temporary injunction, a litigant seeking temporary injunction must satisfy the court first that there is serious question to be tried in the suit and that on the facts before the court there is probability of his being entitled to relief asked for by him. (ii) that the court's interference is necessary to protect him from that species of injury which the court called irreparably before his legal rights can be established on trial and thirdly, the comparative mischief or inconvenience which is likely to ensue from withdrawing the injunction may be greater than what which is likely to arise from grant it. It is no more res integra that even if a litigant has satisfied to the court that he has a prima-facie case in his favour then by this fact alone he shall not be entitled for grant of temporary injunction in his favour. All the three ingredients are to be established to the satisfaction of the court and only on satisfaction on all the three counts, the court may legitimately exercise discretion in his favour by granting temporary injunction. Moreover, in case of grant of temporary injunction in the mandatory form, it is also no more res integra that only in rarest of the rare case such discretion should have been exercised in favour of a litigant. Learned trial court was correct in its approach that as there are very very serious charges of misappropriation of the Corporation's money as well as falsification of the account books it is not a fit case for grant of temporary injunction. It is true and as what has been said by their Lordships of the

Hon'ble Supreme Court in the case of Narayan Dattatraya vs. State of Maharashtra (supra) on proof of this charge certainly appropriate penalty would have been of dismissal or removal of the employee from the services. It is a case where the respondent has been dismissed from services by the Corporation and in the matter of grant of temporary injunction the court is also concerned to observe the question whether the litigant has any alternative remedy in the matter or not. Where he has a efficacious remedy available then normal rule is that the civil court may not exercise its discretionary power in his favour. However, as on merits, I do not find any case in favour of the plaintiff-respondent, I do not consider it to be appropriate to decide on the question whether the suit is maintainable or not.

17. In such matter, in the trial court, prima-facie I am of the opinion that the matter needs to be considered in little bit depth in appropriate case. In this case the fault that the principles of natural justice have been violated by the disciplinary authority by acting as presenting officer/Judge in his own case is found by the appellate court. Even if it is taken to be correct for the sake of argument then where the matter would have been taken in reference before the Labour Court, the employer-Corporation has right to prove misconduct before it by producing evidence and on proving thereof the order of dismissal of the employee will relate back to the date on which the order has been passed by the disciplinary authority. In this case rightly learned counsel for the petitioner has placed reliance on the decision of R. Thiruvirkolam vs. Presiding Officer (supra).

18. Even if it is taken that there was some violation of principles of natural justice, in this case, committed by the disciplinary authority still it cannot be a case where straightway decree of reinstatement should have been passed. Reference in this respect may have to the decision of the Apex Court in the case of State of Punjab vs. Dr. Harbhajan Sing reported in JT 1996 (5) SC 403 where their Lordships of the Supreme Court held that in such matter the matter has to be sent back to the disciplinary authority for proceeding afresh in the departmental inquiry from the stage where the principles of natural justice have been violated. I find sufficient merits in the contention of the learned counsel for the petitioner that in this case by grant of temporary injunction the learned trial court has granted the final relief which otherwise the court may or may not grant. The Apex court time and again has given a rule of caution to the courts that grant of final relief in the form of

interim relief is not permissible. The Apex Court has deprecated the practice of grant of relief in substance giving the principal relief by way of interim relief in the matter. I find sufficient merits in the contention of the learned counsel for the petitioner that in this case the learned first appellate court has given the final relief to the plaintiff-respondent at the interlocutory stage. Be that as it may.

19. Learned first appellate court has not considered the very important aspect of the matter. In the matter of grant of temporary injunction one of the important consideration is that where denial of temporary injunction to the litigant will cause any irreparable injury to him which cannot be compensated in terms of money or he may be put in irretrievable position. Another important consideration is to see the question of balance of convenience and the appellate court considers that the balance of convenience also favours for grant of temporary injunction in favour of the plaintiff-respondent then only injunction could have been granted. Learned first appellate court has not considered that in this case after holding the full-fledged inquiry on charges of misappropriation and falsification of account books and on proof of those charges, the plaintiff-respondent has been dismissed from services.

20. The substantial grievance which has been made by the plaintiff-respondent on the legality, propriety and correctness of the departmental inquiry, learned first appellate court has decided the matter in favour of the petitioner. Only fault found by it in the inquiry is that the disciplinary authority has acted as Inquiry Officer/Presenting Officer in his own cause. Be that as it may. It is the case where the plaintiff-respondent has been dismissed from services. Ultimately, after recording evidence of the parties, the court will accept his case or not is also a matter to be taken note of. It is only an interlocutory stage where the parties have come with their respective cases and nothing has finally been adjudicated and decided inter-se the parties. At this stage, the court should have been more cautious and careful in grant of temporary injunction more so where it is prayed in the form of mandatory temporary injunction.

21. The question which arises for the consideration of the court is whether any irreparable injury will be caused to the plaintiff-respondent by declining temporary injunction in his favour by the trial court or the balance of convenience also favours for grant of

temporary injunction in his favour. It is the case of dismissal from the services of the plaintiff-respondent and in case the temporary injunction is declined to him it will not certainly cause any irreparable injury which cannot be compensated in terms of money nor he will be put in irretrievable position.

22. The matter has to be considered from another aspect. In a case where the dismissal of an employee from services is found to be defective on the ground of violation of principles of natural justice I have my own reservation whether any relief of reinstatement could have been ordered. In such matters, at the most, the order may be passed for holding fresh inquiry and in view of this position it is very difficult to say that any irreparable injury will be caused to the plaintiff-respondent in case the temporary injunction is declined to him. In view of this legal position, in fact, in such matters, there is no question of grant of temporary injunction in favour of the delinquent employee and officer. However, otherwise also, if ultimately he succeeds then all the consequential benefits for which he is found to be entitled in accordance with law could have been granted and so it cannot be said to be a case by any stretch of imagination that in case the interim relief is not granted in favour of the plaintiff-respondent it will cause any irreparable injury to him, which cannot be compensated in terms of money. In such matters, balance of convenience also disfavours the grant of temporary injunction. In this case, learned first appellate court has certainly committed serious material irregularity in exercise of its jurisdiction in interfering with the order of the learned trial court. The order of the court below impugned in this civil revision application cannot be allowed to stand. From the facts of this case, I find that in case the impugned order is allowed to stand, it will occasion in failure of justice and will cause irreparable injury to the petitioner. The respondent has been dismissed from the services after holding a full-fledged departmental inquiry and in view of the decision given by the Apex Court even if the inquiry is found to be defective on some count, it is difficult to say at this stage that at the final stage a decree of reinstatement could be passed by the trial court straightaway. The thing which may not be permissible even at the final stage how it can be given or granted to the respondent at the interlocutory stage. So it is a case which clearly gives out that in case the impugned order is allowed to stand it will cause serious prejudice to the petitioner.

23. Accordingly, this revision application succeeds and the same is allowed and the order dated 4-1-1994 of 4th Extra Assistant Judge, Rajkot in C.M.Appeal No.127/93 is quashed and set aside and C.M. Appeal No. 127/93 is dismissed. Rule is made absolute. However, in view of the fact that nobody put appearance for plaintiff-respondent, no order as to costs.

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